

TTAB

TRADEMARK
Docket No. 032236.9040

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

**In the Matter of Application No. 76/033,895
for the Mark ADVENT NETWORKS**

RECOTON CORPORATION,
Opposer,

Opposition No. 91150749

v.

ADVENT NETWORKS, INC.,
Applicant.



07-03-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #73

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

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APPEAL BOARD

ANSWER TO NOTICE OF OPPOSITION

Advent Networks, Inc. ("Applicant"), Applicant in the above-captioned matter, in accordance with Rules 2.106 and 2.116 of the Trademark Rules of Practice and Rule 8 of the Federal Rules of Civil Procedure, hereby timely answers the Notice of Opposition (the "Opposition") filed by opposer Recoton Corporation ("Opposer").

Applicant responds to the paragraphs of the Opposition as follows:

In response to the unnumbered introductory paragraphs of the Opposition, Applicant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein relating to Opposer's corporate status or address and therefore denies same. Applicant further expressly denies that Opposer will be damaged in any way by the registration of application Serial No. 76/033,895 (the "Application").

1. Applicant denies the allegations of paragraph 1 of the Opposition.

2. Applicant denies the allegations of paragraph 2 of the Opposition.

Further, Applicant denies each and every allegation of the Opposition not specifically admitted or otherwise responded to herein. Applicant specifically denies that Opposer is entitled to oppose the Application or to any other relief whatsoever against Applicant.

AFFIRMATIVE DEFENSES

By way of further answer and affirmative defenses, Applicant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

1. The Opposition fails to state a claim upon which any relief can be granted to Opposer.

SECOND AFFIRMATIVE DEFENSE

2. No damage or injury has resulted, will result, or can result to Opposer from registration of Applicant's ADVENT NETWORKS mark for the goods specified in the registration.

THIRD AFFIRMATIVE DEFENSE

3. Applicant's ADVENT NETWORKS mark is not identical in sight, sound or meaning to Opposer's ADVENT mark, Registration No. 1,008,947 for "audio equipment, namely microphones, microphone pre-amplifiers, frequency balance controls, noise reduction units and loudspeakers, tape decks and accessories therefore namely head cleaning tapes and dust covers."

FOURTH AFFIRMATIVE DEFENSE

4. The goods identified in Applicant's pending Application are not competitive with, related to, or even complementary to, any of the goods for which Opposer has registered the ADVENT mark in the United States. Applicant's goods are sold to sophisticated businesses in the telecommunications industry, whereas Opposer sells according to its ADVENT

Registration No. 1,008,947 consumer electronic goods, to wit, "audio equipment, namely microphones, microphone pre-amplifiers, frequency balance controls, noise reduction units and loudspeakers, tape decks and accessories therefore namely head cleaning tapes and dust covers."

FIFTH AFFIRMATIVE DEFENSE

5. Applicant is informed and believes, and on that basis alleges, that Opposer's claims are barred by estoppel in that Opposer has not pursued other users and/or registrants of ADVENT based marks in the United States for infringement or opposition even though their use is more related to Opposer's use than the goods for which Applicant seeks to register the mark are.

SIXTH AFFIRMATIVE DEFENSE

6. Applicant is informed and believes, and on that basis alleges, that Opposer's claims are barred by laches in that Opposer has not pursued other users of ADVENT based marks for infringement or Opposition even though their use is more related to Opposer's use than the goods for which Applicant seeks to register the mark are.

SEVENTH AFFIRMATIVE DEFENSE

7. Given the nature of Applicant's goods, Applicant's goods are not impulse items but technological products precluding any likelihood of confusion.

EIGHTH AFFIRMATIVE DEFENSE

8. Given the nature of Applicant's goods, Applicant's customers are sophisticated businesses alone precluding any likelihood of confusion.

NINTH AFFIRMATIVE DEFENSE

9. Opposer's ADVENT mark does not, and cannot, constitute a famous mark.

TENTH AFFIRMATIVE DEFENSE

10. Applicant has been using the name ADVENT NETWORKS, INC. since at least as early as 1999 without encountering any actual confusion with Opposer or Opposer's ADVENT marks.

ELEVENTH AFFIRMATIVE DEFENSE

11. Opposer's ownership of Registrations for the ADVENT mark outside the United States can not, and does not, establish the fame of Opposer's ADVENT mark.

TWELFTH AFFIRMATIVE DEFENSE

12. Applicant's use and registration of the ADVENT NETWORK mark cannot, and does not, dilute or tarnish any rights of Opposer.

WHEREFORE APPLICANT PRAYS:

1. That the Board dismiss the Opposition with prejudice;
2. That Application Serial No. 76/033,895 be allowed to proceed to registration; and
3. That any such other and further relief be granted as may be deemed reasonable and appropriate.

Dated: July 1, 2002

Respectfully submitted,

By: 

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CERTIFICATE OF MAILING BY EXPRESS MAIL

BOX TTAB - NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513


Dear Sir:

Express Mail Label No.: EL910818332US

Date of Deposit: July 1, 2002

I hereby certify that the enclosed Answer to Notice of Opposition (in triplicate) and receipt verification postcard are being deposited with the United States Postal Service Express Mail delivery as "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above, and is address to BOX TTAB - NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Respectfully submitted,


Jean Canedo

PROOF OF SERVICE BY MAIL
DEPOSIT AT BUSINESS

I, Jean Canedo, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Brobeck, Phleger & Harrison LLP, Spear Street Tower, One Market, San Francisco, California 94105.

On July 1, 2002, I served a copy(ies) of the following document(s):

ANSWER TO NOTICE OF OPPOSITION

by placing them in a sealed envelope(s) addressed as follows:

Attorney

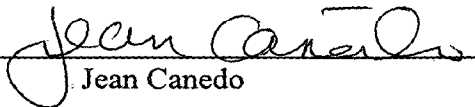
Loan B. Kennedy
Vice President and General Counsel
RECOTON CORPORATION
2960 Lake Emma Road
Lake Mary, Florida 32746

Party(ies) Served

Opposer

I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Brobeck, Phleger & Harrison LLP, , California. I am readily familiar with Brobeck, Phleger & Harrison LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 1, 2002, at San Francisco, California.



Jean Canedo